

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PLAINTIFF'S MOTION FOR RELIEF FROM ORDER AND JUDGMENT

COMES NOW Plaintiff David Whitt, for himself and by and through his undersigned counsel, and, pursuant to FED. R. CIV. P. 60(b), moves to set aside the Memorandum and Order granting Defendants' Motion for Summary Judgment and resulting Judgment (Doc. 105 and 106), and for leave to file a response to Defendants' statement of uncontroverted material facts out of time. In support of this motion, Plaintiff states as follows:

1. Plaintiff David Whitt filed this lawsuit to redress violation of his civil rights after he was arrested for filming SLMPD activity in the City of St. Louis. On February 11, 2021, Defendants filed a motion for summary judgment on all remaining counts. Doc. 91-93, 95. Plaintiff filed a timely response brief in opposition to Defendants' motion on March 15, 2021. Doc. 101.

2. At the time Plaintiff's counsel filed his brief in opposition to Defendants' motion, Plaintiff's counsel had prepared and believed he filed a response to Defendants' statement of uncontested material facts. Due to a clerical mistake, that document was not filed.

3. Plaintiff's counsel with principal responsibility for the case, W. Patrick Mobley, was out of the office the week of July 6, 2021, when that filing error was discovered upon issuance of the Order and Judgment. At that time, his supervisor, undersigned counsel, brought the error to

his attention. Prior to that, Mr. Mobley believed he had filed the response to Defendants' statement of facts.

4. Promptly upon learning of the error, undersigned counsel prepared this motion to set aside the Order and Judgment due to "mistake, inadvertence, surprise, or excusable neglect" FED. R. CIV. P. 60(b)(1) or, in the alternative, under FED. R. CIV. P. 60(b)(6), to "prevent the judgment from becoming a vehicle of injustice." *Harley v. Zoesch*, 413 F.3d 866, 870 (8th Cir. 2005) (quoting *IF Realty L.P. v. Rochester Assocs.*, 92 F.3d 752, 755 (8th Cir. 1996)).

5. Plaintiff respectfully asks the Court to set aside its July 6 Order and Judgment because Plaintiff's delay is minimal, the reason for the delay was an excusable mistake and not an act of bad faith, and setting aside the judgment will not cause undue delay in the fair and just resolution of this case.

6. Furthermore, Plaintiff's response to Defendants' statement of facts, if properly considered by this court, would have demonstrated that there remain questions of material fact that a jury must decide. Permitting the Order and Judgment to stand in the face of these material and contested facts would be inequitable and unjust—to Mr. Whitt who is personally blameless in this connection.

7. In compliance with E.D.Mo. L.R. 4.01, Mr. Whitt has filed a memorandum in support of this motion contemporaneously herewith and incorporates the same by reference. Attached as an exhibit to the accompanying memorandum is Plaintiff's response to Defendants' statement of uncontested material facts, in a format unedited since it was finalized for filing on March 15, 2021.

WHEREFORE, to prevent the Order and Judgment from becoming a "vehicle of injustice," Plaintiff respectfully requests that this Court set aside the July 6, 2021 Order and Judgment, permit

Plaintiff to file his response to Defendants' statement of uncontroverted material facts out of time, and grant such other relief as is just and appropriate under the circumstances.

Dated: July 7, 2021

Respectfully submitted,

RODERICK AND SOLANGE
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